

CHAPTER 17 DOWNTOWN DEVELOPMENT OVERLAY DISTRICT**Section**

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1700 GENERAL PROVISIONS

1700.1 The Downtown Development (DD) Overlay District is applied to the core of the Downtown area, including subareas identified in the Comprehensive Plan as the Downtown Shopping District (Retail Core), the Arts District, Gallery Place, Chinatown, Pennsylvania Quarter, Convention Center, and Mount Vernon Square, and areas designated for historic preservation and housing mixed use, which areas overlap geographically with the subareas. The boundaries of the DD Overlay District are indicated in Map A, filed in Zoning Commission Case No. 89-25, which may be viewed at the D.C. Office of Zoning. All street locations in this overlay district are in Northwest Washington.

1700.2 The purpose of the DD Overlay District is to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected Downtown sectors. The adopted planning policies for this area are primarily contained in 10 DCMR, chapter 9, entitled "Downtown Plan Element," and 10 DCMR, chapter 11, entitled "Land Use Element," as amended.

1700.3 The most important general purposes include the following:

- (a) To create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Comprehensive Plan, including retail, hotel, residential, entertainment, arts, and cultural uses;
- (b) To guide and regulate office development, which is generally favored by market forces over the other desired uses, so as to further the land use objectives for retail, hotel, residential, entertainment, arts, and cultural uses;

- (c) To protect historic buildings and places while permitting sensitive and compatible new development subject to the historic preservation review process of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Official Code, §§ 6-1101 to 6-1115 (2001))(formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl. & 1999 Supp.));
- (d) To substantially achieve the specific land use and development policies for the following Downtown subareas: Retail Core, Gallery Place, Convention Center, Chinatown, Pennsylvania Avenue West, Pennsylvania Quarter, Mount Vernon Square, and Judiciary Square;
- (e) To guide the design of buildings to be generally consistent with the urban design, street orientation and design, and historic preservation policies of the Downtown Plan Element of the Comprehensive Plan;
- (f) To foster growth opportunities for and retention of small and minority businesses; and
- (g) To provide adequate and visually acceptable short-term parking and consolidated loading facilities having access primarily from streets other than F, G, and 7th Streets.

1700.4 The DD Overlay District and the underlying zoning together constitute the zoning regulations for the geographic area referred to in § 1700.1. Wherever there are conflicts between this chapter and the underlying zoning, the provisions of the DD Overlay District shall govern.

1700.5 The requirements and incentives of this chapter apply to all new buildings and to all other buildings where any additions, alterations, or repairs within any twelve-month (12) period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Tax and Revenue as of the date of the building permit application; provided:

- (a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit;
- (b) The assessed value of the building shall be the value set forth in records of the Office of Tax and Revenue as of the date of the building permit application; and
- (c) In the case of an addition, the requirements and incentives of this chapter apply only to the addition.

- 1700.6 An applicant for a building permit or a certificate of occupancy involving ten thousand square feet (10,000 ft.²) or more of gross floor area within the DD Overlay District shall provide a copy of the application, or of those portions of the application affected by the DD Overlay District provisions to the Director of the D.C. Office of Planning, at the time of filing with the Zoning Administrator; the Director shall, within ten (10) days of the filing, provide the Zoning Administrator with a memorandum setting forth the Director's interpretation of DD Overlay District requirements, incentives, and other effects.
- 1700.7 A Planned Unit Development (PUD) in the DD Overlay District shall be subject to the following provisions in addition to those of chapter 24 of this title:
- (a) The PUD shall only be granted for projects that are superior in achieving the purposes of this chapter and the adopted objectives and policies of the Downtown Plan Element of the Comprehensive Plan;
 - (b) The PUD process shall not be used to reduce requirements in this chapter for housing or preferred uses, specifically retail, service, entertainment, arts, and residential uses;
 - (c) Except as provided in § 1706.7, the guideline floor area ratio (FAR) for a PUD may be granted only after the applicant has demonstrated to the Zoning Commission that transferable development rights have been purchased to the maximum feasible extent prior to the request for additional density in excess of that amount; and
 - (d) Notwithstanding paragraphs (b) and (c) of this subsection, if a PUD is proposed to govern development of the University of the District of Columbia campus and other uses in Squares 401, 402, 425, and 426, the PUD shall be guided by the applicable policies of the Comprehensive Plan.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 6-641.15 (2001) (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))).

SOURCE: Final Rulemaking published at 38 DCR 612 (January 18, 1991); as amended by Final Rulemaking published at 46 DCR 1016, 1017 (February 5, 1999); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8471-72 (October 20, 2000).

1701 AREA-WIDE DESIGN STANDARDS

- 1701.1 The floor area ratio credit for open arcades as provided in § 2515 is not applicable in the DD Overlay District.

- 1701.2 Any open arcade in the DD Overlay District shall extend the length of an entire block frontage, or shall connect with an open arcade in an abutting building in such fashion as to provide a continuous walkway.
- 1701.3 Not less than seventy-five percent (75%) of each streetwall of new construction to a height of not less than fifteen feet (15 ft.) shall be constructed to, or within four feet (4 ft.) of, the property line between the subject lot and each abutting street right-of-way.
- 1701.4 Along the following street frontages, the provisions of § 2117.8(c)(1) are modified so as to prohibit the construction or use of a driveway providing access from the adjacent public street to required parking spaces or loading berths on the subject lot:
- (a) F Street, N.W., from 7th to 15th Streets;
 - (b) G Street, N.W., from 7th to 15th Streets;
 - (c) 10th Street, N.W., from E to F Streets;
 - (d) 7th Street, N.W., from Pennsylvania Avenue to Mount Vernon Square;
 - (e) H Street, N.W., from 5th to 8th Streets;
 - (f) Pennsylvania Avenue, N.W., from 6th to 15th Streets; and
 - (g) Indiana Avenue, N.W., from 6th to 7th Streets.
- 1701.5 Along the street frontages listed in § 1701.4, and those listed in paragraph (c) of this subsection, not less than fifty percent (50%) of the surface area of any streetwall at the ground floor level of each building shall be devoted to display windows and to entrances to commercial uses or to the building; provided:
- (a) The windows shall use clear or low emissivity glass, except for decorative or architectural accent;
 - (b) Entrances to the building, excluding vehicular entrances, shall be separated by not more than fifty feet (50 ft.) on average for the linear frontage of the building; and
 - (c) The additional applicable street frontages shall be E Street, N.W., from 6th to 14th Streets; 10th through 13th Streets, N.W., from E to H Streets; 9th Street, N.W., from E to I Streets; 14th and 15th Streets, N.W., from Pennsylvania Avenue to New York Avenue; I Street, N.W., from 5th to 7th Streets; and 8th Street, from Pennsylvania Avenue to Mount Vernon Square.

1701.6 The requirements of §§ 1701.1 through 1701.5 shall not apply to a department store, theater, hotel, apartment house, or church or other place of worship.

1701.7 Except in the underlying R-5-B, R-5-E, C-2-A, and C-3-A Districts, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6.601.09 (2001) (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. and 1999 Supp.))), provided, that a building that fronts on Massachusetts Avenue or on Mount Vernon Square shall be designed and built so that no part of the building shall project above a plane drawn at a forty-five degree (45°) angle from a line located one hundred ten feet (110 ft.) above the property line abutting Massachusetts Avenue or Mount Vernon Square.

SOURCE: Final Rulemaking published at 38 DCR 612, 615 (January 18, 1991); as amended by Final Rulemaking published at 39 DCR 8305, 8309 (November 13, 1992); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8472-73 (October 20, 2000).

1702 AREA-WIDE USE PROVISIONS

1702.1 Each building that faces or abuts a street segment identified in §§ 1701.4 or 1701.5 shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to permitted retail, service, arts, and arts-related uses listed in §§ 1710.1 and 1711.1; provided:

- (a) Not more than twenty percent (20%) of the required gross floor area of the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices;
- (b) The uses specified in paragraph (a) shall account for no more than thirty percent (30%) of the total gross floor area requirement for commercial preferred uses in a building, as provided in §§ 1703 through 1705; and
- (c) This ground floor use requirement shall not apply to a building that is entirely devoted to hotel or apartment house use, or to a church or other place of worship.

1702.2 Each building shall provide on-site or account for off-site, gross floor area equivalent devoted to preferred uses; provided:

- (a) Preferred uses shall be provided and located according to the Downtown subarea guidelines in §§ 1703 through 1706;

- (b) For the purposes of this chapter, the gross floor area of a cellar devoted to preferred uses other than residential uses shall count towards the minimum requirement without affecting the permitted maximum bulk of the building;
- (c) The net leasable area occupied by the required preferred uses shall be no less than eighty percent (80%) of the gross floor area allocated to these uses; and
- (d) The uses listed in § 1712.1 are deemed office uses in the DD Overlay District for purposes of FAR computations.

1702.3 A child development center or a child development home shall count at one-and-one-half (1½) times its actual gross floor area towards the residential preferred use requirement of any subarea; provided, that the child development center will be open and operating during normal business hours at least five (5) days each week and fifty (50) weeks each calendar year, excluding public holidays.

1702.4 An existing theater, hotel, or apartment house shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot, unless such conversion or replacement has been reviewed and approved by the Board of Zoning Adjustment as a variance pursuant to § 3103.2.

1702.5 A department store in existence as of March 13, 1989, shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot, unless such conversion or replacement has been reviewed and approved by the Board of Zoning Adjustment as a variance pursuant to § 3103.2; provided, that:

- (a) The entirety of the gross floor area may be converted as a matter of right to any combination of preferred retail, service, arts, and arts-related uses listed in §§ 1710 and 1711, provided that any conversion on Square 346 may also include residential use, as defined in this chapter;
- (b) The gross floor area of the department store space after conversion may include a reduction or rearrangement in floor area to accommodate a new atrium or light well, or different configuration of the new use or uses; and

- (c) A department store that existed as of the adoption of the SHOP District on March 13, 1989, but that was no longer in existence and operating as of the adoption of the DD Overlay District on January 18, 1991, may be converted to any uses permitted in the underlying zone district; provided, that retail, service, arts, and arts-related uses listed in §§ 1710 and 1711 shall occupy no less than 2.0 FAR equivalent in the converted or restructured building.
- 1702.6 If a church or other place of worship that is in use on January 18, 1991 is later included in a redevelopment, the portion that continues as a church or place of worship shall be exempt from the requirements of this section.
- 1702.7 A parking lot, parking garage, or parking spaces at or above grade in a building shall be permitted as follows:
 - (a) The parking facility shall be permitted as a matter of right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;
 - (b) The parking facility shall be permitted as a matter of right if it provides parking only for residents; and
 - (c) The parking facility shall require Board of Zoning Adjustment approval as a variance pursuant to § 3103.2 if it provides all-day, commuter parking.
- 1702.8 A building in Square 404, excluding Lot 813, or in Square 405 north of a line extending the midpoint of G Place eastward from 9th to 8th Street, which properties are outside the subarea boundaries provided in §§ 1703 through 1706, shall provide preferred uses according to one of the following provisions, at the election of the property owner:
 - (a) Preferred uses may be provided according to the requirements and incentives of any one of the following sections: §§ 1703, 1704, 1705, or 1706;
 - (b) As an alternative to paragraph (a), the property owner may develop not less than 1.5 FAR of bonus office density received from another lot or lots within the DD Overlay District, pursuant to § 1709; and
 - (c) If bonus density is developed pursuant to paragraph (a) or transferable development rights are developed pursuant to paragraph (b), the maximum permitted FAR shall be 9.5 in Square 405 and 8.5 in Square 404.

SOURCE: Final Rulemaking published at 38 DCR 612, 616-619 (January 18, 1991); as amended by: Final Rulemaking published at 44 DCR 4527, 4528 (August 8, 1997); Final Rulemaking published at 46 DCR 8180, 8182 (October 8, 1999); Final Rulemaking published at 47 DCR 1900, 1901 (March 17, 2000); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8473-74 (October 20, 2000).

1703 DOWNTOWN SHOPPING DISTRICT (RETAIL CORE)

1703.1 The principal policies and objectives for the Downtown Shopping (SHOP) District, or Retail Core, derived from the Comprehensive Plan, are to:

- (a) Create the most concentrated area of retail, service, arts, and arts-related uses in Downtown, in excess of one floor of these uses, with the greatest retail concentration oriented to F and G Streets, N.W.; and
- (b) Strengthen the character and identity of the Downtown Shopping District by means of physical design standards that ensure the following:
 - (1) New buildings constructed to the property line and primarily oriented to the street rather than to internal spaces;
 - (2) Continuous retail, service, and entertainment uses on the ground level of buildings, with ample display windows and frequent store entrances to the outdoor pedestrian circulation system; and
 - (3) A pedestrian environment with ample sidewalks interrupted by a minimum of vehicular driveways, especially along F and G Streets.

1703.2 The provisions of this section apply to the general area identified in the Comprehensive Plan as the Downtown Shopping District or Retail Core, comprising Squares 223, 224, 225, 252, 253, 254, 288, 289, 290, 319, 320, 321, 345, 346, 347, 375, 376, and 377. This area is bounded by H Street and New York Avenue, N.W., on the north; E Street and Pennsylvania Avenue on the south; 9th Street on the east; and 15th Street on the west.

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to the retail and service uses listed in § 1710 or the arts and arts-related uses listed in § 1711; provided:

- (a) The gross floor area devoted to the retail, service, arts and arts-related uses listed in §§ 1710 and 1711 shall be no less than 0.5 FAR on the ground floor;

- (b) Not more than twenty percent (20%) of the required gross floor area on the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices, delicatessens, fast food restaurants, printing or fast copy services, newsstands, dry cleaners, or any combination thereof;
- (c) This ground floor use requirement shall not apply to a building that is devoted entirely to hotel or apartment house use or to a church or other place of worship; and
- (d) In the applicable sector of the Downtown Arts District, that is, Squares 254, 290, 321, 347, 377, 376, and 375 (south of G Place), uses that are listed in § 1711 shall comprise not less than fifty percent (50%) of the gross floor area required to be devoted to preferred uses.

1703.4 A building that provides gross floor area for preferred uses as required by § 1703.3 and that includes any of the bonus uses indicated in this subsection, may count the gross floor area devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	<u>Gross floor area devoted to the bonus use</u>		<u>Proportionate number of square feet of additional gross floor area earned for on-site or off-site development</u>
(a) Department Store;	1	to	3
(b) Anchor store having 60,000 sq. ft. or more of gross leasable area. A complex of two (2) or more anchor stores in a single building that accommodates a total of at least 90,000 sq. ft. of gross leasable area devoted to anchor stores and, if present, legitimate theater;	1	to	2
(c) Anchor store having 25,000 sq. ft. to 59,999 sq. ft. of gross leasable area; and	1	to	1.5
(d) Movie theater; performing arts space; small, minority, or displaced business; and other uses listed in §§ 1710 and 1711 in excess of the 0.5 FAR equivalent required by § 1704.3, not to be counted in addition to other bonus floor area earned from this subsection, and not applicable to department store sites regulated by § 1702.5	1	to	1

1703.5 In the ARTS District sector of the SHOP Subarea, as identified geographically in § 1703.3(d), and in Square 346, a building shall be eligible for the bonuses specified in paragraphs (a), (b), and (c) of § 1704.6.

1703.6 If a building in the SHOP District uses bonus density, the maximum permitted FAR shall be 10.5 for a building permitted a height of one hundred thirty feet (130 ft.) and 9.5 for a building permitted a lesser height.

SOURCE: Final Rulemaking published at 38 DCR 612, 619 (January 18, 1991); as amended by: Final Rulemaking published at 43 DCR 597 (February 9, 1996); Final Rulemaking published at 44 DCR 4527, 4529-30 (August 8, 1997); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8474-75 (October 20, 2000).

1704 DOWNTOWN ARTS DISTRICT

1704.1 The policies and objectives for the Downtown Arts District, as defined in the Comprehensive Plan, including the Gallery Place subarea of Downtown and portions of the Downtown Shopping (SHOP) District (Retail Core), Pennsylvania Quarter, Convention Center, and Chinatown subareas are to:

- (a) Retain, expand, and support a concentration of spaces and activities for the arts and artists, including the performing and visual arts, cultural facilities, entertainment, and arts-related retail uses;
- (b) Create two (2) strong arts-entertainment corridors within the following areas:
 - (1) A spine of theaters, movie theaters, restaurants, nightclubs, and arts-related retail uses along E Street from 6th to 14th Street, N.W.; and
 - (2) A pedestrian-oriented concentration of museums, art galleries, other performing or visual arts uses, and festive retail-entertainment uses along 7th Street from Pennsylvania Avenue to north of G Street; and
- (c) Encourage the general development pattern indicated in the Comprehensive Plan for the Arts District east of the SHOP District (Retail Core), specifically a mixture of residential, office, and hotel development on upper floors of buildings, with arts, specialty retail, and entertainment uses predominating on the lower levels of the buildings.

- 1704.2 This section applies to properties in the following squares and portions of squares: 291, 322, 348, 406, 407, 408, 431, 432, 455, 456, 457, 458, 459, 460, and those portions of squares 405, 429, and 454 that are south of a line extending the midpoint of G Place eastward from 9th Street to 6th Street.
- 1704.3 Each new or altered building shall devote not less than 1.0 FAR equivalent to retail and service uses listed in § 1710 and arts and arts-related uses listed in § 1711; provided:
- (a) Not less than 0.25 FAR equivalent of the required gross floor area shall be devoted to one or more of the following uses: art center, art exhibition area, art gallery, art school, artist live-work space, artist studio, performing arts space, cabaret, dance hall, dinner theater, legitimate theater, movie theater, museum, or television and radio broadcast studio;
 - (b) A building may comply with the requirements of this subsection by devoting 0.5 FAR equivalent to the uses listed in paragraph (a), in which case the 1.0 FAR equivalent of total preferred uses is not required, and bonus density is earned in excess of the 0.5 FAR equivalent devoted to the uses listed in paragraph (a);
 - (c) A building that provides 1.5 FAR or more of residential uses shall have a reduced requirement of 0.5 FAR equivalent of preferred uses listed in §§ 1710 and 1711, of which no less than fifty percent (50%) shall be § 1711 uses;
 - (d) Squares located in both the Downtown Arts District as delineated in the Comprehensive Plan and the SHOP District shall be subject to the arts and retail provisions of § 1703, as specifically provided in § 1703.3(d); and
 - (e) A building located on a lot of five thousand square feet (5,000 ft.²) or less and having a height of six (6) floors or less at and above grade shall have a preferred use requirement of not less than 0.75 FAR equivalent of the uses listed in §§ 1710 and 1711 combined, and shall not have a residential use requirement as provided in § 1706.
- 1704.4 An unenclosed sidewalk cafe shall count towards the preferred use requirement of § 1704.3, exclusive of paragraph (a); provided:
- (a) The countable sidewalk or atrium area for this purpose shall not exceed one thousand square feet (1,000 ft.²); and

- (b) The sidewalk or atrium area on the lot or on adjacent public space is countable as a restaurant use provided that the sidewalk cafe is operated from a restaurant located on the subject lot.

1704.5 An art exhibition area shall count towards the preferred use requirement of § 1704.3 exclusive of paragraph (a); provided:

- (a) The countable area for this purpose shall be not more than twenty percent (20%) of the total requirement for the preferred uses specified in § 1704.3;
- (b) The area shall be open to the public during normal business hours at least five (5) days per week and fifty (50) weeks per year;
- (c) The art exhibitions shall be curated by an art gallery or professional curator;
- (d) The exhibitions shall change at least four (4) times per year with the exception that up to twenty percent (20%) of the art works may be a permanent exhibition; and
- (e) At least two (2) of the exhibits, or a majority of the total art works displayed on an annual basis, shall be offered for sale to the public.

1704.6 A building that provides the required 1.0 FAR equivalent for preferred uses specified in § 1704.3, and that includes any of the bonus uses in this subsection, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	<u>Gross floor area devoted to the bonus use</u>		<u>Proportionate number of square feet of additional gross floor area earned for on-site or off-site development</u>
(a) Art center, art school, performing arts space, legitimate theater, or museum, in excess in each case of 40,000 sq. ft. of gross floor area as provided in § 1704.8;	1	to	3

1704.6 (continued)

	<u>Gross floor area devoted to the bonus use</u>		<u>Proportionate number of square feet of additional gross floor area earned for on-site or off-site development</u>
(b) Art Gallery or museum located on 7th or G Street, legitimate theater, artist studio, artist live-work space, art center, art school, or performing arts and rehearsal space;	1	to	2
(c) Uses listed in § 1704.3(a); small, minority, or displaced business; and	1	to	1
(d) Other uses listed in §§ 1710 and 1711 in excess of the 1.0 FAR equivalent required by § 1704.3, not to be counted in addition to bonus floor area from paragraphs (a) through (c) of this subsection.	1	to	0.5

1704.7 An art center or art school may qualify for this bonus despite being located in more than one (1) building; provided:

- (a) The buildings are located within a radius of two thousand feet (2,000 ft.) of the centermost building; and
- (b) The art school or art center shall be operated under centralized management as a single institution.

1704.8 Bonus density from arts uses not to exceed 0.5 FAR may be used to develop office space in place of residential space as required in § 1706.

1704.9 A nonprofit arts use shall be entitled to twenty-five percent (25%) of density bonus in excess of the bonus ratio indicated in § 1704.6.

1704.10 Floor area devoted to an arts use listed § 1704.3(a) that has a ceiling height greater than twelve feet (12 ft.) shall count towards the minimum required square footage at a rate of one-and-one-half (1½) times the actual floor area devoted to the use.

SOURCE: Final Rulemaking published at 38 DCR 612, 621 (January 18, 1991); as amended by Final Rulemaking published at 46 DCR 1016 (February 5, 1999); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8475-77 (October 20, 2000).

1705 CHINATOWN

- 1705.1 The principal policies and objectives from the Comprehensive Plan for the Chinatown area are to:
- (a) Protect and enhance Chinatown as Downtown's only ethnic cultural area;
 - (b) Maintain and expand the existing concentration of retail uses emphasizing Chinese and Asian merchandise and related wholesale operations serving residents, visitors, tourists, and business travelers;
 - (c) Reinforce the area's economic viability by encouraging mixed use development, including substantial housing, cultural and community facilities, offices, retail and wholesale businesses, and hotels; and
 - (d) Protect existing housing and the most important historic buildings with suitable preservation controls, residential and commercial zones, and economic incentives.
- 1705.2 This section applies to properties in the following squares: 428, 452, 453, 485, and 486, and those portions of squares 429 and 454 that are north of a line extending the midpoint of G Place eastward from 9th Street to 6th Street.
- 1705.3 Each building that fronts on H Street from 5th to 8th Street, on 7th Street for a distance of one-half (1/2) block north and south of H Street, or on 6th Street for a distance of one-half (1/2) block south of H Street, shall devote not less than 1.0 FAR equivalent to retail, service, arts, and arts-related uses listed in §§ 1710 and 1711 and wholesaling accessory to those uses; provided, that this requirement shall be 0.5 FAR equivalent for a building that fronts on any other street segment in Chinatown or for a building that provides on-site or off-site, a residential component as required by § 1706.
- 1705.4 In Square 485, a residential building that is brought up to building code and covenanted to continue in residential use for twenty (20) years or longer shall be eligible for transferable development rights equal to the floor area maintained in residential use.
- 1705.5 A building that provides the required 1.0 FAR equivalent for preferred uses specified in § 1705.3, and that includes any of the bonus uses indicated in this subsection, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	<u>Gross floor area devoted to the bonus use</u>		<u>Proportionate number of square feet of additional gross floor area earned for on-site or off-site development</u>
(a) Uses listed in §§ 1710 and 1711, in excess of the 1.0 FAR equivalent required by § 1705.3; and	1	to	1
(b) Small, minority, or displaced business	1	to	1

SOURCE: Final Rulemaking published at 38 DCR 612, 625 (January 18, 1991); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8477-78 (October 20, 2000).

1706**RESIDENTIAL AND MIXED USE DEVELOPMENT****1706.1**

The policies and objectives for residential use and development in and near Downtown as specified in the Comprehensive Plan are to:

- (a) Encourage construction of new housing and retention of existing housing so that a sizeable residential component is created that will help accomplish the balanced mixture of uses essential to a "Living Downtown";
- (b) Create the greatest concentration of housing in the Mount Vernon Square area;
- (c) Encourage residential and mixed-use development along Massachusetts Avenue;
- (d) Promote mixed use development including residential use south of Massachusetts Avenue, extending to the south through Judiciary Square north, Chinatown, and Gallery Place; and
- (e) Support the significant residential development in the Pennsylvania Quarter subarea in the 7th Street and Pennsylvania Avenue area.

1706.2

The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area that is depicted in Map B filed in Zoning Commission Case No. 99-3Z, which may be viewed in the Office of Zoning, and that is described by squares in § 1706.8, provided that the transferable development rights provisions of § 1706.3 shall be applicable throughout the DD Overlay District. Map B is incorporated by reference.

- 1706.3 Each lot in the Housing Priority Area shall provide on-site or account for off-site by combined lot development residential use and development as required in this section; provided further, that a building or a combined lot development that provides new residential uses on-site shall generate bonus density or transferable development rights as follows:
- (a) Residential development north of Massachusetts Avenue shall generate one (1) square foot of bonus density or transferable development rights for each square foot of residential use developed;
 - (b) Residential development south of Massachusetts Avenue shall generate two (2) square feet of bonus density or transferable development rights for each square foot of residential use developed; and
 - (c) Residential development that qualifies as affordable dwelling units as defined in § 1799.1 shall generate two (2) square feet of bonus density or transferable development rights for each square foot of affordable housing developed.
 - (d) The bonus density provided by § 1706.7 shall not be used to generate transferable development rights.
- 1706.4 In the DD/C-2-C Overlay District, the following residential and mixed-use provisions apply:
- (a) The maximum FAR shall be 8.0 as a matter of right, which FAR may be devoted to all residential use or include commercial or residential uses as provided in this subsection;
 - (b) Each lot shall provide on-site or account for off-site in a combined lot development no less than 4.5 FAR of residential use;
 - (c) On a lot that is south of Massachusetts Avenue, up to 1.8 FAR of this residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by this section;
 - (d) On a lot that is north of Massachusetts Avenue, up to 1.35 FAR of this residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by this section;

- (e) If such affordable housing is provided off-site, commercial or residential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 1.8 FAR south of Massachusetts Avenue or 1.35 FAR north of Massachusetts Avenue; and
- (f) The residential recreation space required in § 773.1 shall be reduced to five percent (5%) of the gross floor area devoted to residential use, provided the gross floor area made available by this paragraph shall be devoted entirely to residential use.

1706.5 In the DD/C-3-C Overlay District, the following residential and mixed-use provisions apply:

- (a) The maximum FAR shall be 9.5 as a matter of right, which FAR may be devoted to all residential use or may include commercial or residential uses as provided in this subsection;
- (b) Each lot shall provide on-site or account for off-site in a combined lot development no less than 3.5 FAR of residential use;
- (c) On a lot that is south of Massachusetts Avenue, up to 1.4 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by this section;
- (d) On a lot that is north of Massachusetts Avenue, up to 1.05 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by this section;
- (e) If affordable housing is provided off-site pursuant to paragraph (c) or (d) of this subsection, commercial or residential FAR may be substituted on-site, or in a combined lot development, by the same amount of gross floor area as the affordable housing, up to the maximum limit of 1.4 FAR south of Massachusetts Avenue or 1.05 FAR north of Massachusetts Avenue; and
- (f) The residential recreation space required in § 773.1 shall be reduced to five percent (5%) of the gross floor area devoted to residential use, provided the gross floor area made available by this paragraph shall be devoted entirely to residential use.

1706.6 In the DD/C-4 Overlay District, the following residential and mixed-use provisions apply:

- (a) The maximum FAR shall be 10.0 as a matter of right, which FAR may be devoted to all residential use or may include commercial or residential uses as provided in this subsection;
- (b) Each building shall provide on-site or account for off-site in a combined lot development no less than 2.0 FAR of residential use;
- (c) Up to 0.8 FAR of this residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by this section; and
- (d) If such affordable housing is provided off-site, commercial or residential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 0.8 FAR.

1706.7 To assist the development of residential and preferred uses, the following density bonuses may be used:

- (a) The maximum gross floor area permitted under §§ 1706.4, 1706.5, and 1706.6 may be increased by 0.5 FAR up to a maximum of 8.5 FAR in the DD/C-2-C Overlay District, 10.0 FAR in the DD/C-3-C Overlay District, and 10.5 FAR in the DD/C-4 Overlay District; provided the increase in gross floor area is achieved by:
 - (1) Receiving transferable development rights as provided in § 1709, which gross floor area may be devoted to any permitted use on the receiving lot;
 - (2) Constructing or assisting affordable housing as defined in this chapter and as further governed by this section; or
 - (3) Generating retail bonus density as provided in § 1706.16.
- (b) Except for historic landmarks and properties listed in § 1707.4 in the Downtown Historic District, the maximum FAR limitations in §§ 1706.4, 1706.5, and 1706.6 shall not apply to any lot that devotes the increase in gross floor area entirely to residential use on-site; provided:
 - (1) The increase in gross floor area shall not be used to meet the minimum residential requirements of §§ 1706.4, 1706.5, or 1706.6; and
 - (2) The maximum residential FAR that may be accepted through combined lot development is listed in the following table:

ZONE DISTRICT OF THE LOT RECEIVING HOUSING	MAXIMUM ALLOWABLE COMBINED LOT TRANSFER (FAR)
DD/C-2-C	3.5
DD/C-3-C	6.0
DD/C-4	8.0

- (3) The relief from maximum FAR limitations provided by this paragraph does not alter or modify the obligation to comply with all applicable Zoning Regulations affecting the lot, nor does it alter or modify an applicant's burden of proof when seeking zoning relief.

1706.8 For the purposes of permitting and governing combined lot developments as provided by § 1708, the Housing Priority Area is divided into three (3) subareas as follows:

- (a) Housing Priority Area A, the Mount Vernon Square North area, is located north of Massachusetts Avenue and comprises the DD/C-2-C and DD/C-3-C zoned squares and parts of squares numbered 369, 370, 401, 402, 425, 426, 450, 451, 483, 484, W484, 514, 515, N515, 516, S516, 525, 526, 527, 528, 556, and 558;
- (b) Housing Priority Area B, the Mount Vernon Square South area, comprises the DD/C-2-C and DD/C-3-C zoned properties that are located south of Massachusetts Avenue, including squares and parts of squares numbered 247, 283, 284, 316, 317, 342, 343, 371, 372, 427, 428, 452, 453, 485, 486, 517, and 529 and the commercial and underdeveloped properties in square 247 with an approved plan unit development on or before January 18, 1991, for so long as the planned unit development approval remains valid; and
- (c) Housing Priority Area C, the Downtown Core area, comprises the following DD/C-4 zoned properties located south of H Street: Squares and parts of squares numbered 377 (Lots 36, 37, 42, 806, 828, 829, 847, and 848), 406, 407, 408, 431, 432, 454, 455, 456, 457, 458, 459, 460, and 491.

1706.9 Combined lot development as authorized by § 1708 may be used by two (2) or more properties within any one of the three (3) identified Housing Priority Areas, but not by properties in different Housing Priority Areas.

- 1706.10 A residential building in existence as of January 18, 1991, shall be eligible to count its gross floor area towards the residential use requirements of this section; provided:
- (a) The building shall be continued in residential use or, if vacant, brought up to building code and covenanted to continue in residential use for twenty (20) years or longer;
 - (b) If the residential gross floor area of the building is less than the residential use requirement of the lot, there shall be no additional residential requirement for that lot; and
 - (c) If the residential gross floor area of the building exceeds the required amount of residential use for the lot, the excess gross floor area may be used in a combined lot development to help meet the residential requirement of another lot or lots.
- 1706.11 No minimum residential use requirement shall apply in Square 485 nor to any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena.
- 1706.12 Bonus density derived from arts uses in the Downtown Arts District pursuant to § 1704.6 and bonus density derived from the bonus provisions of § 1705.5 pertaining to the Chinatown subarea may be used to substitute office space for up to 0.5 FAR of residential use as required by this section.
- 1706.13 If a development project includes both nonresidential uses and required residential uses, whether on the same lot or in a combined lot development, no certificate of occupancy shall be issued for the nonresidential space until either:
- (a) A certificate of occupancy has been issued for the residential space; or
 - (b) An escrow account has been established and funded in a combined lot development pursuant to § 1708.2.
- 1706.14 In the Housing Priority Area, the maximum height of building shall be as provided in §§ 1701.7 and 1706.15.
- 1706.15 A building constructed on a lot fronting on M Street shall be limited to a maximum height of sixty feet (60 ft.) to a depth of forty feet (40 ft.) from the lot line on M Street.
- 1706.16 In Housing Priority Area A, for each square foot of gross floor area devoted to one of the preferred uses listed in this subsection, the project shall earn one square foot (1 ft.²) of bonus gross floor area:

- (a) Grocery store;
 - (b) Drug store;
 - (c) Dry cleaner or laundry;
 - (d) Hardware store;
 - (e) Variety store; and
 - (f) Child development center.
- 1706.17 In Housing Priority Areas B and C, each square foot of grocery store use shall earn two square feet (2 ft.²) of bonus floor area.
- 1706.18 Renovation of a nonresidential building in existence as of January 18, 1991, and having a height of six (6) floors or less at and above grade shall not trigger a housing requirement as provided in this section.
- 1706.19 A hotel or inn established pursuant to special exception approval in an SP District shall be deemed a conforming use in a DD/R-5 Overlay District. The hotel or inn shall continue to be governed by the conditions of the Board of Zoning Adjustment Order granting the use. Enlargement or other changes shall be governed by the variance provisions of § 3103.2.
- 1706.20 The residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to § 1707.4.
- 1706.21 A reduced residential requirement shall apply to property that was formerly in a highway right-of-way; provided:
- (a) The housing that is built shall include affordable dwelling units as defined in this chapter;
 - (b) The gross floor area of the affordable dwelling units shall constitute not less than sixty percent (60%) of the total FAR of the project;
 - (c) The remainder of the project shall consist substantially of other residentially related development, such as child development, senior or elder care, community center, and other neighborhood-serving social services that are offered by a nonprofit, religious, or charitable organization, but may also include Commercial District ground floor commercial uses; and

- (d) Where an improved right-of-way divides a project, the entire project shall be considered as if on one lot for the purposes of determining compliance with this section.

1706.22 The Department of Employment Services (DOES) building site in Square 491 shall not be eligible to send any of the required minimum 2.0 FAR of residential use off-site though the combined lot development provisions of § 1708 or the affordable housing provisions of § 1706.23.

1706.23 If the affordable housing referenced in §§ 1706.4 through 1706.6 is provided by direct construction, the following conditions shall apply:

- (a) The owner or developer of the development site in the DD Overlay District that generates the affordable housing component may construct the affordable dwelling units or may joint venture with either a nonprofit housing sponsor or a for-profit builder-developer;
- (b) Construction of the affordable dwelling units may be either construction of a new building or buildings or rehabilitation of an existing building or buildings;
- (c) The total project cost, including acquisition, rehabilitation, and long-term subsidy, shall be not less than the amount that the project would be obligated to contribute if the financial contribution option specified in §§ 1706.25 through 1706.28 had been pursued;
- (d) If construction or rehabilitation of the required square footage of affordable housing does not reach the required financial threshold specified in paragraph (c), the remaining housing requirement may be met by financial contribution to a housing trust fund or by construction or rehabilitation of additional units of housing;
- (e) If the affordable dwelling units are provided by rehabilitation, the building(s) shall have been previously in nonresidential use, or if previously in residential use, shall either have been vacant for not less than three (3) years prior to rehabilitation or, if occupied, shall be a tenant-sponsored purchase of the building;
- (f) The Director of the Department of Housing and Community Development or the administrator of the D.C. Housing Production Trust Fund shall certify to the Zoning Administrator that:

- (1) Suitable legal and financial arrangements have been made to assure that the housing qualifies and will be continued as affordable dwelling units for not less than twenty (20) years;
 - (2) The expenditure of funds per dwelling unit and the use of the funds in combination with other financial leverage is an effective means of assisting in the production of affordable housing; and
 - (3) All conditions of §§ 1706.23 through 1706.28 have been met; and
 - (g) No certificate of occupancy shall be issued for the nonresidential development within the DD Overlay District until a certificate of occupancy has been issued for the affordable dwelling units.
- 1706.24 If the affordable dwelling units are supplied by a contribution to a trust fund, the conditions specified in §§ 1706.25 through 1706.27 shall apply.
- 1706.25 The amount of the financial contribution shall be determined by the formula: $C = GFA (AV/LA)/FAR \times 90\%$, where:
- (a) C = The contribution;
 - (b) GFA = The amount of additional commercial space that is built on-site, measured in square feet;
 - (c) AV = The assessed value of the land and improvements on the July 1st preceding the date on which the application for a building permit is filed;
 - (d) LA = The number of square feet of land included in the property;
 - (e) FAR = The commercial FAR used by the tax assessor to determine the assessed value; and
 - (f) 90% = The proportion of assessed commercial value that has been determined to be appropriate for this contribution.
- 1706.26 The contribution shall be made to the D.C. Housing Production Trust Fund or to both the D.C. Housing Production Trust Fund and a nonprofit housing trust fund as defined in this title; provided, that not more than fifty percent (50%) of any contribution shall go to a nonprofit housing trust fund.
- 1706.27 The payment of the housing contribution shall occur before the issuance of a building permit for the development in the DD Overlay District that generates the housing contribution.

- 1706.28 Beginning July 1, 1992, and on or before that date on each even numbered year thereafter, the Director of the D.C. Department of Housing and Community Development, or the administrator of the D.C. Housing Production Trust Fund, shall report to the Zoning Commission regarding affordable dwelling units subsidized or constructed pursuant to these provisions and, if appropriate, shall recommend any modifications needed to the affordable housing mechanisms of this chapter.

SOURCE: Final Rulemaking published at 38 DCR 612, 627 (January 18, 1991); as amended by: Final Rulemaking published at 39 DCR 4947 (July 3, 1992); Final Rulemaking published at 40 DCR 1956 (March 19, 1993); Final Rulemaking published at 42 DCR 6612 (December 1, 1995); Final Rulemaking published at 44 DCR 3224 (June 6, 1997); Final Rulemaking published at 46 DCR 1016-1017 (February 5, 1999); Final Rulemaking published at 46 DCR 8180, 8182-83 (October 8, 1999); Final Rulemaking published at 47 DCR 1900 (February 28, 2000); Final Rulemaking published at 47 DCR 1900, 1901 (March 17, 2000); Final Rulemaking published at 47 DCR 2791 (April 21, 2000); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8478-81 (October 20, 2000); Final Rulemaking published at 47 DCR 2595 (March 23, 2001); Final Rulemaking published at 47 DCR 7225, 7229-32 (August 3, 2001); Final Rulemaking published at 48 DCR 7741 (August 17, 2001); Final Rulemaking published at 48 DCR 10054 (November 2, 2001); Final Rulemaking published at 48 DCR 11561, 11563-64 (December 21, 2001); and Final Rulemaking published at 49 DCR 881, 883 (February 1, 2002).

1707 HISTORIC PRESERVATION

- 1707.1 The most directly applicable policies and objectives from the Comprehensive Plan and other adopted policies for Downtown may be summarized as follows:
- (a) Preserve the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site;
 - (b) Encourage restoration and adaptive reuse of historic landmarks and contributing buildings in historic districts, together with compatible alterations and compatible new construction;
 - (c) Restrict permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a suitable scale of new construction in historic districts, especially in projects combining new development with preservation;
 - (d) Permit flexibility as to building height, rear yard, and court requirements so as to allow maximum design flexibility for the massing and sculpting of the restricted building mass in relationship to the scale and character of affected historic buildings on the lot and nearby subject to the exterior design review and controls exercised by the Historic Preservation Review Board;

- (e) Provide appropriate economic incentives to encourage preservation, including suitable on-site density and transferable development rights; and
- (f) Encourage occupancy of historic buildings by active uses such as arts, cultural, entertainment, retail, and small business uses, in keeping with the potential of historic buildings to make multiple contributions to the character of a "Living Downtown."

1707.2 This section applies to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.

1707.3 Uses within buildings in the historic districts and landmark sites within the DD Overlay District are governed by the underlying zone districts and the special use requirements and incentives provided in §§ 1703 through 1706.

1707.4 The permitted on-site FAR for any permitted use shall be 6.0 on each of the following lots and squares listed in this subsection; provided, that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be averaged with the permitted FARs of other lots that are part of the development, including any lots not subject to the 6.0 FAR maximum, so as to achieve a composite FAR for the entire development:

- (a) Square 320, lots 17, 800, 801, 808, 809, and 810;
- (b) Square 346;
- (c) Square 347, lots 18, 19, 800 through 803, and 818 through 826;
- (d) Square 376, lots 36 through 46, 48, 63, 64, 70, 801, 802, and 803;
- (e) Square 377, lots 35, 819 through 821, 823 through 827, and 846;
- (f) Square 406, lots 11, 15, 807, 808, 809, and 814;
- (g) Square 428, lots 16, 17, 801 through 804, and 808 through 815;
- (h) Square 429;
- (i) Square 452, lots 26 through 29, 800, 802 through 806, and 817 through 824;
- (j) Square 453, lots 24 through 31, 40, 50, 811, 812, 813, 815 through 819, 821, 831 through 835, 839, and 48;

- (k) Square 454, lots 827 through 835;
- (l) Square 518, lots 845 through 855;
- (m) Square 405, lot 839;
- (n) All of Square 429½;
- (o) All of Square 430;
- (p) Square 431, lots 23, 815, and 816;
- (q) Square 458, lots 816, 818, and 823;
- (r) Square 459, Lot 809;
- (s) Square 460, lots 802 through 805 and 818;
- (t) All of Square 485;
- (u) Square 517, lots 20, 46, 834, and 835;
- (v) Square 457, lots 36, 826, and 871; and
- (w) Square 456, lots 34, 37, 857, and 868.

1707.5 A project in the Downtown Historic District or the Pennsylvania Avenue Historic Site, or an individual historic landmark shall not be eligible to construct bonus density or transferable development rights on-site, but may transfer bonus density or unused development rights to other lots in the DD Overlay District or to lots in a receiving zone as delineated in § 1709; provided:

- (a) The historic building or part of the historic building shall be a historic landmark or a building within the Downtown Historic District or the Pennsylvania Avenue Historic Site that has been preserved in whole or in part pursuant to the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Official Code §§ 6-1101 to 6-1115 (formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl. & 1999 Supp.))), and this chapter;
- (b) The property shall be one of those properties identified in § 1707.4 and accordingly restricted in on-site density to 6.0 FAR or an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions;

- (c) A historic building that has previously been restored pursuant to approval of the Historic Preservation Review Board within a ten-year (10-year) period prior to January 18, 1991, shall not be eligible to earn transferable development rights;
- (d) Undeveloped gross floor area of up to 4.0 FAR may be transferred from the historic sending lot to a lot or lots elsewhere in the DD Overlay District or in a receiving zone; provided:
 - (1) Each one square-foot (1 ft.²) of unused density less than the matter-of-right commercial density of the underlying zone district shall earn one square-foot (1 ft.²) of transferable development rights; and
 - (2) The matter-of-right densities of the applicable underlying zone districts are deemed to be 10.0 or 8.5 FAR in the DD/C-4 Overlay District pursuant to §§ 771.2 and 771.5, 6.5 FAR in the DD/C-3-C Overlay District and, for the purpose of this section only, 6.0 FAR in the DD/C-2-C Overlay District;
- (e) In order to qualify for the transfer of development rights provided in this section, the property owner shall execute an instrument of transfer as provided in § 1709 that:
 - (1) Effects a binding reduction in the unused development rights under the Zoning Regulations otherwise available to the sending lot, to the extent of the rights transferred; and
 - (2) Requires completion of restoration of the historic building, buildings, or parts thereof pursuant to plans approved by the Historic Preservation Review Board or the Mayor's Agent for Historic Preservation as required by D.C. Law 2-144, D.C. Official Code §§ 6-1101 to 6-1115 (2001) (formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl.));
- (f) For the purposes of administering § 1707.5(e)(2), the Historic Preservation Division, Office of Planning, shall certify in writing to the Zoning Administrator that restoration has been completed pursuant to plans approved as consistent with D.C. Law 2-144, D.C. Official Code §§ 6-1101 to 6-1115 (2001) (formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl.));

- (g) Prior to the completion of restoration as certified in § 1707.5(f), one or more transfers of development rights as provided for in § 1709 may be executed following issuance of a building permit for the sending lot, but a certificate of occupancy for the transferred development rights on the receiving lot shall not be issued until the restoration on the sending lot has been certified, as provided in § 1707.5(f);
- (h) After the completion of restoration has been certified as provided in § 1707.5(f), any transferred development rights shall vest in the receiving lot without any relationship to the status of the historic sending lot;
- (i) Notwithstanding the requirements of §§ 1707.5(g) and (h), up to twenty-five percent (25%) of the transferable development rights that the sending lot is eligible for may be transferred to and fully vest in a receiving lot under the following conditions:
 - (1) The owner of the sending lot shall receive final approval of restoration plans from the Historic Preservation Review Board pursuant to D.C. Law 2-144, D.C. Official Code §§ 6-1101 to 6-1115 (2001)(formerly codified at D.C. Code §§ 5-1001 to 5-1015 1994 Repl.);
 - (2) The instrument of transfer as required by § 1707.5(e) shall include a requirement that the monetary proceeds of the transfer of development rights shall be utilized by the owner of the sending lot exclusively for the cost of design and restoration, or restoration and new construction, of the historic building on the sending lot;
 - (3) If the financial proceeds of the transfer exceed the total cost of design and construction on the sending lot, the instrument of transfer shall provide that full funding of design and construction shall be reserved, together with a draw schedule and timetable for the construction work, prior to any other use of the funds in excess of that required for design and construction; and
 - (4) If § 1707.5(i)(3) is applicable to a project, the transferable development rights shall not vest in the receiving lot or lots until the Director of the D.C. Office of Planning has certified to the Zoning Administrator that the allocation of funds and draw schedule provided pursuant to § 1707.5(i)(3) are sufficient to allow the completion of the project; and

- (j) Bonus density, if any, generated by bonus uses on the sending lot may be transferred in addition to the transferable development rights provided in this subsection for restricted density on the historic lot, as provided in § 1709.

1707.6 The rear and side yard requirements of the underlying zone district shall not apply in the Downtown Historic District or Pennsylvania Avenue Historic Site.

1707.7 A historic landmark or a contributing building in a historic district that has a gross floor area in excess of the 6.00 FAR limit specified in § 1707.4 shall be permitted to occupy all floors of the building for permitted uses.

SOURCE: Final Rulemaking published at 38 DCR 612, 632 (January 18, 1991); as amended by: Final Rulemaking published at 39 DCR 8312, 8313 (November 13, 1992); Final Rulemaking published at 43 DCR 599 (February 9, 1996); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8481-82 (October 20, 2000); and Final Rulemaking published at 48 DCR 10053, 10054 (November 2, 2001).

1708 COMBINED LOT DEVELOPMENT

1708.1 Two (2) or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses as follows:

- (a) The lots may be located in the same square or in different squares;
- (b) A combined lot development shall be eligible for the density and area allowances permitted in §§ 1703, 1704, 1705, and 1706;
- (c) The combined lot development shall be limited to lots located within the same subarea as defined in §§ 1703, 1704, 1705, and 1706, except as provided in § 1708.1(d);
- (d) Notwithstanding the requirements of paragraph (c) of this subsection and of § 1706.9, a historic property that is identified and governed by § 1707.4 is eligible to serve as the location of required residential uses within a combined lot development, even if the historic properties are located outside the Housing Priority Area established in § 1706.2;
- (e) The required gross floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required gross floor area for preferred uses shall be incorporated into the building design and occupied; provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;

- (f) In a combined lot development that does not include the allocation of required residential uses, the certificate of occupancy for a lot sending FAR for required preferred uses to a receiving lot may be revoked if:
 - (1) No building permit for the receiving lot has been issued within three (3) years after the issuance of the certificate of occupancy for the sending lot; or
 - (2) No certificate of occupancy for the receiving lot has been issued within five (5) years after the issuance of the certificate of occupancy for the sending lot;
- (g) The maximum permitted gross floor area for all uses, the minimum required gross floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum gross floor area requirements;
- (h) A building constructed as of January 18, 1991 or that was under construction on that date is not eligible to utilize the combined lot development provisions;
- (i) No allocation of gross floor area for required uses shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded in the land records of the District of Columbia against all lots included in the combined lot development;
- (j) The instrument shall be in the form of a declaration of covenants that:
 - (1) Is signed by the owners of all affected lots;
 - (2) Runs with the land in perpetuity;
 - (3) Burdens all lots involved in the allocation of gross floor area for required preferred uses;
 - (4) Binds the present and future owners of the lot receiving FAR to reserve, design, construct, cause to be occupied, and maintain in perpetuity an area on-site equal to the gross floor area of required preferred uses received; and

- (5) States the maximum permitted gross floor areas for all uses on all lots, the minimum required gross floor areas for preferred uses on all lots, and the gross floor area allocated. The covenant shall further state that, after the transfer, the combined lots conform to the maximum and minimum gross floor area requirements on the lots;
- (k) If an escrow is to be funded pursuant to § 1708.2, the covenant shall include the attachments required by § 1708.2(c) and an acknowledgment by the owner of the receiving lot, on behalf of itself and its successors and assigns that:
 - (1) It has voluntarily established or consented to the establishment of an escrow account;
 - (2) The Government of the District of Columbia will be acting in reliance upon the establishment and funding of the escrow if a certificate of occupancy is issued for nonresidential uses on the sending lot prior to the issuance of a certificate of occupancy for residential uses on the receiving lot;
 - (3) The attached escrow agreement requires the release of the escrow funds and any accrued interest thereon to the D.C. Housing Production Trust Fund, or other entity as directed by the Zoning Commission, under the circumstances stated in § 1708.5 (b); and
 - (4) Such a release neither negates the present or future owners' obligations under the covenant and this chapter to reserve, design, construct, cause to be occupied, and maintain in perpetuity an area on the receiving lot equal to the gross floor area of required preferred uses received nor constitutes such an extraordinary or exceptional circumstance or condition as to justify the grant of a variance from the strict application of the requirements of this chapter;
- (l) The declaration of covenants shall require the owner of the receiving lot to reimburse the Government of the District of Columbia for such reasonable expenses as the District incurred to successfully enforce its rights under the declaration;
- (m) The declaration of covenants shall expressly state that it may be amended or terminated only with the approval of the Zoning Commission, after public hearing and only upon a finding that the proposed modification or termination is fully justified and consistent with the purposes of this chapter; and

- (n) The declaration of covenants shall be approved in content by the Zoning Administrator and certified for legal sufficiency by the Office of the Corporation Counsel. The declaration shall also contain a written statement by the Director of the D.C. Office of Planning attesting to:
 - (1) The lots' eligibility to allocate residential and nonresidential uses;
 - (2) The accuracy of the computations with respect to the amount of required preferred uses allocated; and
 - (3) Whether, after the transfer, the combined lots will conform to the maximum and minimum gross floor area requirements on the lots before any such transfer.

1708.2 In accordance with 11 DCMR § 1706.13(b), a certificate of occupancy may be issued for nonresidential uses on a sending lot or lots that allocated required residential uses to a receiving lot, without regard to the status of the receiving lot, if:

- (a) An escrow account is established with a financial institution, including a title insurance company, that is recognized to be in good standing by the District of Columbia or other jurisdiction in which it conducts business;
- (b) The escrow account is funded in accordance with § 1708.3; and
- (c) The following are attached to the combined lot development covenant recorded and filed in accordance with § 1708.1 (i):
 - (1) A certification by the financial institution of the amount of funds received;
 - (2) An acknowledgment by the financial institution that the funds will be disbursed only in accordance with the mandatory escrow terms in § 1708.5; and
 - (3) A copy of the agreement governing the escrow account.

1708.3 The escrowed funds shall be equal to the amount computed according to either the formula $E = GFA (AV / LA) / NRFAR \times 50\%$, or the formula $E = GFA \times \$15$, whichever is less. The values in these formulae shall have the following meaning:

- (a) E = The amount deposited into escrow;

- (b) GFA = The gross floor area of additional nonresidential uses that will be achieved on the sending lot as a result of the combined lot transfer, above that to which the sending lot would have been permitted as a matter of right, as measured in square feet;
- (c) AV = The assessed value of the sending lot's land and improvements, as of thirty (30) days prior to the escrow funding date, as that value is indicated on the records of the Office of Tax and Revenue;
- (d) LA = The number of square feet of land included in the sending lot;
- (e) NRFAR = The permitted nonresidential FAR before the transfer; and
- (f) 50% = The proportion of commercial value that has been determined to be appropriate for the escrow.

Illustration: A sending lot zoned DD/C-2-C wishes to transfer its entire residential requirement. The lot is 20,000 square feet in size. As a consequence of its DD/C-2-C zoning, the lot's permitted density is 8.0 FAR, of which at least 4.5 FAR (that is, 90,000 square feet of gross floor area) must be devoted to residential uses. The lot's assessed value, as of 30 days prior to escrow funding, was \$700,000.

Based upon this scenario, the following formula values apply: GFA = 90,000 sq. ft.; AV = \$700,000; LA = 20,000 sq. ft.; and NRFAR = 3.5 (8.0 - 4.5 = 3.5 of permitted nonresidential FAR).

The escrow funding would be calculated under the formula $E = GFA (AV / LA) / NRFAR \times 50\%$ as follows: $90,000 \text{ sq. ft.} \times (\$700,000 / 20,000 \text{ sq. ft.}) / 3.5 \times 50\% = \$450,000$. Under the $E = GFA \times \$15$ formula, the escrow would be calculated as follows: $90,000 \text{ sq. ft.} \times \$15 = \$1,350,000$. Since the result of the first formula (\$450,000) is less than result of the second formula (\$1,350,000), the minimum escrow funding would be \$450,000.

1708.4 Escrowed funds shall be invested in investment grade securities.

1708.5 The escrow account agreement shall include terms providing that:

- (a) Upon certification by the project architect to both the financial institution holding the funds and the Zoning Administrator that construction of all the residential uses required for the combined lot are at least 50% complete on the receiving lot, the funds held in the escrow account shall be disbursed in accordance with the applicable terms of the escrow agreement.
- (b) If the above certification is not made within five (5) years after the filing date of the combined lot development covenant, or such further period of time as may have been permitted by the Zoning Commission pursuant to § 1708.6, escrowed funds and any accrued interest shall be released to the District of Columbia Housing Production Trust Fund and designated for the financing of housing in the DD Overlay District in the same Housing Priority Area as the receiving lot. The escrow agent shall advise the Zoning Commission if the funds can not be released in accordance with this provision and, in that event, shall release the funds as the Commission may thereafter direct, consistent with the purposes of this chapter.

1708.6 The owner of the receiving lot may request the Zoning Commission to allow an additional period, up to a maximum of three (3) years, to make the certification set forth in §1708.5(a). The request shall identify why the certification could not be made within the five-year (5-year) period provided and be accompanied by a timetable for construction and occupancy of the residential uses required for the combined lot. The Commission may grant the request upon a showing that the owner has proceeded with due diligence and in good faith in constructing the required residential uses.

SOURCE: Final Rulemaking published at 38 DCR 612, 635 (January 18, 1991); as amended by: Final Rulemaking published at 39 DCR 8312, 8316 (November 13, 1992); Final Rulemaking published at 40 DCR 3749 (June 11, 1993); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8482-83 (October 20, 2000) and Final Rulemaking published at 49 DCR 881, 883-89 (February 1, 2002).

1709 TRANSFERABLE DEVELOPMENT RIGHTS

1709.1 This section shall authorize the transfer of development rights from a project within the DD Overlay District to a receiving lot or lots located elsewhere in the DD Overlay District or in the Downtown East, New Downtown, or other receiving zones or sites pursuant to this section.

1709.2 Transferable development rights shall be generated either by historic preservation as provided in § 1707, bonus uses pursuant to the subarea provisions of §§ 1703 through 1705, or the residential development provisions of § 1706.3. Transferable development rights shall also be generated pursuant to the downtown historic properties residential rehabilitation incentive provisions of § 755.

- 1709.3 No transfer of development rights from historic properties pursuant to §§ 755 and 1707, nor of bonus density derived from bonus uses, shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Zoning Administrator and the Director of the D.C. Office of Planning, has been entered into among all of the parties concerned, including the District of Columbia.
- 1709.4 In the case of transferable development rights derived from historic preservation pursuant to § 1707, the instrument shall effect the requirements of § 1707.5 as well as the applicable requirements of this section.
- 1709.5 In the case of bonus density derived from bonus uses, the following provisions shall apply:
- (a) The property owner shall obtain a building permit indicating in appropriate plans the floor area designed and reserved for the designated bonus uses;
 - (b) The instrument of transfer shall indicate the size of the applicable bonus uses in square feet of floor area and the location of bonus uses by reference to the plans required by paragraph (a);
 - (c) The indicated floor area shall be occupied by the designated bonus uses, or held as vacant;
 - (d) The instrument of transfer may be executed to transfer development rights to receiving lots after the building permit has been issued; provided, that no certificate of occupancy for the transferred floor area shall be issued for the receiving lot until the conditions specified in paragraphs (e) or (f) of this subsection, as applicable, have been met;
 - (e) If the project on the sending lot generates transferable development rights from bonus uses of less than fifteen thousand square feet (15,000 ft.²) of gross floor area, any transferred development rights shall vest in the receiving lot without regard for the status of the development on the sending lot, after the certificate of occupancy for the bonus uses on the sending lot has been issued;
 - (f) If the project on the sending lot generates transferable development rights from bonus uses of fifteen thousand square feet (15,000 ft.²) or more of gross floor area, any transferred development rights shall vest in the receiving lot without regard for the status of development on the sending lot, after applicant provides evidence of a lease agreement with a complying user/occupant of the bonus gross floor area; provided:

- (1) The applicant shall provide the Zoning Administrator and the Director of the D.C. Office of Planning with evidence of the lease agreement with the operator of the bonus use; and
 - (2) The Zoning Administrator, with the concurrence of the Director of the Office of Planning, will certify in writing that the requirements of this paragraph have been satisfied; and
 - (g) Following the execution and recordation of an instrument transferring development rights to a receiving lot, any modification of provisions of the instrument that relates to the type, size, or discontinuance of a bonus use in the sending lot shall require the approval of the Zoning Commission, after public hearing and with the concurrence of the Office of Planning; provided, that the Commission shall find that the proposed modification is fully justified and consistent with the purposes of this chapter.
- 1709.6 The instrument of transfer shall increase the development rights under the Zoning Regulations otherwise available to the receiving lot, to the extent of the rights transferred.
- 1709.7 If more than one transfer of development rights is made from a sending lot, the second transfer and all subsequent transfers shall be numbered "two" and sequentially, and the instrument of transfer shall include the names of the transferors and transferees involved in all previous transfers, including the amount of gross floor area transferred and the dates of recordation of each transfer.
- 1709.8 Transferable development rights may be re-transferred from the original receiving lot to another eligible receiving lot; provided, that there is compliance with the procedures specified in § 1709.7 and other applicable provisions.
- 1709.9 Nothing in this chapter shall prohibit the purchase of transferable development rights by an entity or individual who intends to resell the transferable development rights at a future date for use on a receiving lot, so long as there is compliance with this section and chapter.
- 1709.10 A certified copy of the instrument of transfer shall be filed with the Zoning Administrator prior to approval by the Department of Consumer and Regulatory Affairs of any building permit application affected by the transfer.
- 1709.11 The instrument shall be recorded in the Office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this agreement for transfer of required gross floor area or bonus floor area.

- 1709.12 The notice of restrictions and transfer shall run with the title and deed to each affected lot.
- 1709.13 A building that has been constructed or that is under construction as of January 18, 1991, shall not be eligible to earn bonus density or transferable development rights, nor to utilize the combined lot development provisions.
- 1709.14 The instrument of transfer shall be processed in the government as follows:
- (a) The applicant shall submit the instrument of transfer to the Zoning Administrator, with a copy provided to the Director of the Office of Planning;
 - (b) The Zoning Administrator and the Office of Planning shall review the instrument to determine whether its contents are complete and accurate as to the applicable provisions of the DD Overlay District;
 - (c) If the Zoning Administrator and the Director of the Office of Planning find that the instrument is complete and accurate in content, the Zoning Administrator shall transmit the instrument to the Office of the Corporation Counsel, together with a written statement that the content complies with the provisions of the DD Overlay District;
 - (d) The Corporation Counsel shall determine whether the instrument is legally sufficient to effect the transfer of development rights;
 - (e) If the Corporation Counsel finds the instrument to be legally sufficient, the Corporation Counsel shall forward it to the Mayor after notifying the Zoning Administrator of the finding;
 - (f) After signature by the Mayor or by the Secretary of the District of Columbia for the Mayor, the covenant or instrument of transfer shall be returned to the Zoning Administrator;
 - (g) The applicant, upon notification by the Zoning Administrator that the instrument has been signed by the Mayor, shall take the covenant to the Recorder of Deeds, who shall record the covenant with the applicable sending and receiving lots, and provide the applicant with two (2) certified copies of the covenant and of title certificates for all affected properties; and
 - (h) The applicant shall provide one (1) certified copy to the Zoning Administrator and one (1) to the Office of Planning.

- 1709.15 The Downtown East receiving zone consists of the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626, 627, and 628 through 631.
- 1709.16 The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118.
- 1709.17 The North Capitol receiving zone consists of Squares 668 through 677, 709 through 713, and 715, each zoned C-3-C.
- 1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, and N743, each zoned C-3-C.
- 1709.19 The Southwest receiving zone consists of Squares 268, 270, 299, 300, 327, 386, 387, 463 through 466, 493 through 495, and 536 through 538, and Lot 61 in Square 435, each zoned C-3-C.
- 1709.20 If the height of a receiving building exceeds the height that the provisions of this title allow as a matter of right for a building located on an abutting lot, including a lot that is separated from the receiving lot by an alley, no part of the receiving building shall project above a plane at a forty-five degree (45°) angle from a line that is as follows:
- (a) Directly above the zone district boundary line between such abutting lot and the receiving lot; and
 - (b) Above such boundary line by the distance of the matter-of-right height that this title allows for such abutting lot.
- 1709.21 In the New Downtown, North Capitol, Capitol South, and Southwest receiving zones, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), and the maximum permitted FAR shall be 10.0 for buildings permitted a height of one hundred thirty feet (130 ft.), and 9.0 for buildings permitted a lesser height.
- 1709.22 In the New Downtown receiving zone, the height of a receiving building may not be measured from a point that fronts on New Hampshire Avenue.

- 1709.23 In the Downtown East receiving zone, the maximum permitted FAR for any permitted uses shall be 9.0 and the maximum permitted building height shall be one hundred ten feet (110 ft.)
- 1709.24 In addition to the matter-of-right transfers authorized by this section, a lot that is approved and developed as a Planned Unit Development pursuant to chapter 24 of this title may serve as a receiving lot for transferable development rights; provided:
- (a) The Planned Unit Development shall be located in a receiving zone or in a DD/C-2-C, DD/C-3-C, or DD/C-4 Overlay District;
 - (b) The maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, D.C. Official Code §§ 6-601.01 to 6-601.09 (2001)(formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl.)); and the maximum permitted FAR shall be 10.5 for buildings permitted a height of one hundred thirty feet (130 ft.) and 9.5 for buildings permitted a lesser height; and
 - (c) Development rights may not be transferred to a lot that is within the site of a Planned Unit Development approved prior to October 1, 1989, nor to a historic landmark or a lot in a historic district.

SOURCE: Final Rulemaking published at 38 DCR 612, 635 (January 18, 1991); as amended and renumbered by: Final Rulemaking published at 39 DCR 8312, 8318 (November 13, 1992); and Final Rulemaking published at 46 DCR 1016, 1018 (February 5, 1999); as amended by Final Rulemaking published at 47 DCR 5871, 5874 (July 21, 2000); Final Rulemaking published at 47 DCR 6230, 6232 (August 4, 2000); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8483-86 (October 20, 2000).

1710 RETAIL AND SERVICE USES

- 1710.1 For the purposes of this chapter, the following uses are preferred retail and personal/consumer service uses:
- (a) Anchor Store;
 - (b) Antique Store;
 - (c) Apparel and Accessories Store;
 - (d) Appliance Store;
 - (e) Auction House;
 - (f) Auto and Home Supply Stores, excluding installations;

- (g) Bank Loan Office, Savings & Loan, Credit Union, or Other Financial Institution;
- (h) Bakery, limited to baking of food sold on premises;
- (i) Bicycle Shop;
- (j) Barber or Beauty Shop;
- (k) Candy Store;
- (l) Child Development Center;
- (m) Computer Store;
- (n) Cosmetic Store;
- (o) Camera Store;
- (p) Delicatessen;
- (q) Department Store;
- (r) Dressmaking or Tailor Shop;
- (s) Drug Store;
- (t) Dry Cleaners;
- (u) Fabric Store;
- (v) Fast Food Restaurant, excluding drive-through;
- (w) Florist and Plant Stores;
- (x) Furniture Store;
- (y) Gift, Novelty, and Souvenir Shop;
- (z) Grocery Store;
- (aa) Hardware Store;
- (bb) Health or Exercise Studio;

- (cc) Hobby, Toys, and Game Shop;
- (dd) Home Furnishings Store;
- (ee) Jewelry Store;
- (ff) Liquor Store;
- (gg) Luggage and Leather Goods Store;
- (hh) Newsstand;
- (ii) Office Supplies and Equipment Store;
- (jj) Optician;
- (kk) Paint Store;
- (ll) Pet Store;
- (mm) Printing, Fast Copy Service;
- (nn) Radio, Television, and Consumer Electronics Store;
- (oo) Secondhand Store;
- (pp) Shoe Repair and Shoeshine Parlor;
- (qq) Shoe Store;
- (rr) Specialty Food Store;
- (ss) Sporting Goods Store;
- (tt) Telegraph Store;
- (uu) Tobacco Store;
- (vv) Travel Agency, Ticket Office;
- (ww) Variety Store;
- (xx) Video Tape Rental; and

- (yy) Other similar personal/consumer service establishment or retail uses, including assemblage and repair clearly incidental to the principal use.

SOURCE: Final Rulemaking published at 38 DCR 612, 640 (January 18, 1991).

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

- (a) Art Center;
- (b) Art Exhibition Area;
- (c) Art Gallery;
- (d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (e) Artist Live-Work Space;
- (f) Artist Studio;
- (g) Artists' Supply Store;
- (h) Arts Organizations, Administrative Offices of;
- (i) Arts Services, including set design, and restoration of art works;
- (j) Assembly Hall, Auditorium, Public Hall, or Other Performing Arts Space, including rehearsal/pre-production space or concert hall;
- (k) Book Store;
- (l) Cabaret;
- (m) Dance Hall, Discotheque, or Ballroom;
- (n) Dinner Theater;
- (o) Drinking Place, including bar, nightclub, or cocktail lounge;
- (p) Legitimate Theater;
- (q) Movie Theater;

- (r) Museum;
- (s) Performing Arts Ticket Office or Booking Agency;
- (t) Photographic Studio;
- (u) Picture Framing Shop;
- (v) Record Store, Musical Instruments Store;
- (w) Restaurant; and
- (x) Television and Radio Broadcast Studio.

SOURCE: Final Rulemaking published at 38 DCR 612, 641 (January 18, 1991).

1712 OFFICE SPACE USES

1712.1 For the purposes of this chapter, the following uses are office space uses and not preferred uses:

- (a) Accountant;
- (b) Architect;
- (c) Attorney;
- (d) Bail Bondsman;
- (e) Counseling Service;
- (f) Consultant - General;
- (g) Dentist, Doctor, or Medical Office;
- (h) Employment Agency;
- (i) Escrow Agent;
- (j) Government;
- (k) Health Clinic;
- (l) Insurance Broker;

- (m) Laboratory;
- (n) Landscape Architect;
- (o) Mortgage Broker;
- (p) Real Estate Agent, Appraiser, Broker, Developer;
- (q) Stockbroker;
- (r) Tax Preparer;
- (s) Title Company;
- (t) Trust Company; and
- (u) Utility Company, Offices of

SOURCE: Final Rulemaking published at 38 DCR 612, 642 (January 18, 1991).

1799 DEFINITIONS

1799.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Additional commercial space - the extra gross floor area permitted for commercial or office use on a lot in the DD Overlay District in exchange for providing or financially subsidizing affordable housing in other neighborhoods of the District of Columbia. (40 DCR 1959)

Affordable dwelling unit - a dwelling unit that is sold or rented to a household of low or moderate income. (40 DCR 1958)

Anchor store - a single retail store, having twenty-five thousand square feet (25,000 sq.ft.) or more of gross leasable area, and that is operated under single management and usually a single Certificate of Occupancy. An anchor store may include entertainment, recreation, or arts functions that are accessory to the principal retail use, or that have a separate Certificate of Occupancy for a portion of the total floor area. The subordinate uses may include eating and drinking, performance or visual art, limited recreational areas, children's play areas, audio and video displays, and interactive electronic and similar functions. (45 DCR 4529)

Art center - a multi-functional arts use that:

- (a) Comprises two (2) or more distinct arts uses integrated under single management and a single Certificate of Occupancy;

- (b) Includes but is not limited to uses such as art gallery, artist studio, art school, performing arts space, administrative offices of arts organizations, movie theater, artist live-work space; and
- (c) Occupies part or all of a single building or a group of buildings that are within a radius of two thousand feet (2,000 ft.) of the centermost building.

Art exhibition area - a building lobby or part of a lobby, or another publicly accessible room on the basement or first or second floors of a building, which space is designed and used for the public display and sale of works of art.

Assessed value - the fair market value of property, as determined by the property tax assessment records of the District of Columbia Office of Tax and Revenue, as of the July 1st preceding the date on which the building permit application is filed. (40 DCR 1959)

Department store - a single retail store, in excess of ninety thousand square feet (90,000 ft.²) of gross leasable area, that is:

- (a) Involved in the sale of, among other things, apparel and furnishing;
- (b) Organized into departments or sections that are integrated under single management; and
- (c) Operated under a single certificate of occupancy.

Displaced downtown business - a business that occupies a building on or after the date on which a demolition permit has been issued for that building, or that occupied a building that was demolished after January 1, 1986.

Gross leasable area - the sum of the floor area occupied by the business or use, as measured from the exterior faces of the walls encompassing the space, and including any stairways, elevator shafts, escalators, or mechanical areas inside the perimeter walls of the business use. In a building occupied by multiple tenants or multiple uses, the central elevator core or cores, associated lobbies, stairways, and mechanical areas shall be excluded from gross leasable area, if they serve the building as a whole.

Housing Production Trust Fund - the trust fund established within the Department of Housing and Community Development by the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802 (2001) (formerly codified at D.C. Code § 45-3102 (1996 Repl.))), the purpose of which is to stimulate production of housing for low and moderate income families and individuals. (40 DCR 1959)

Low income household - a household of one or more individuals with a total income equal to less than fifty percent (50%) of the Standard Metropolitan Statistical Area median as certified by the Department of Housing and Community Development. (40 DCR 1959)

Minority business - a Certified Minority Business as designated by the District of Columbia Minority Business Opportunity Commission.

Moderate income household - household of one or more individuals with a total income equal to between fifty percent (50%) and eighty percent (80%) of the Standard Metropolitan Statistical Area median as certified by the Department of Housing and Community Development. (40 DCR 1959)

Net leasable area - the sum of the floor area occupied by the business or use, as measured from the interior faces of the walls encompassing the space, and excluding any portion of the space devoted to mechanical equipment, lobby area, stairways, or elevators, if that portion of space serves the building as a whole.

Nonprofit housing sponsor - an organization that qualifies as a nonprofit organization under § 501(c) (3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. § 501(c) (3)) and that specializes in assisting or building affordable dwelling units. (40 DCR 1959)

Nonprofit housing trust fund - an organization that qualifies as a nonprofit organization under § 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. § 501(c)(3)), and also meets the following requirements:

- (a) Exists primarily for the purpose of assisting in the production of affordable dwelling units;
- (b) Operates a trust fund that disburses money for affordable housing development;
- (c) Receives applications for funds directly from developers of affordable housing;
- (d) Has adopted criteria for selection of projects and allocation of funds among various types of affordable housing developments; and
- (e) Has been certified by the Director of the Department of Housing and Community Development as a qualifying nonprofit organization that also complies with paragraphs (a) through (d). (40 DCR 1959)

Performing arts center - one or more facilities that provide space for the performing arts, including but not limited to concert halls and legitimate theaters.

Residential uses - those uses defined in § 199.1 as apartments, apartment houses, bachelor apartments, rooming houses, and boarding houses.

Small business - a business that occupies two thousand square feet (2,000 ft.²) or less of net leasable area and that provides evidence of not being franchise-operated.

SOURCE: Final Rulemaking published at 38 DCR 612, 642 (January 18, 1991); as amended by: Final Rulemaking published at 40 DCR 1956, 1958-59 (March 19, 1993); Final Rulemaking published at 44 DCR 4527, 4529 (August 8, 1997); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8466-67 (October 20, 2000).